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March 23, 2010

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The Honorable Vincent J. Poppiti, Special Master
Fox Rothschild LLP
919 North Market Street, Suite 1300
Wilmington, DE 19899-2323

**Re: *In re Intel Corp. Microprocessor Antitrust Litigation*, MDL No. 05-1717-JJF;
Phil Paul v. Intel Corp., Cons. C.A. No. 05-485-JJF
DM 13;**

Dear Judge Poppiti:

Class Plaintiffs submit this response to Defendant Intel's letter of March 18, 2010 regarding the recent decision of the U.S. District Court for the Eastern District of Arkansas, *Tyler v. Alltel Corp.*, 2010 WL 670119 (E.D. Ark. Feb. 23, 2010). Class Plaintiffs respectfully submit that, like other cases on which Intel relies, as explained in Class Plaintiffs' Reply Brief in Further Support of Their Motion for Class Certification ("Reply Brief") (D.I. 2017 in MDL No. 05-1717-JJF, at 55-57), *Tyler* is inapposite to the pending class certification motion for several reasons.

First, *Tyler* involved the lawfulness of prepayment penalties specified in contracts for mobile telephone service and is essentially a fraud case. *Tyler*, 2010 WL 670119 at *2. The principal issues in the case therefore involved the representations made by the defendant and the mental state – *i.e.*, reliance thereon – of the class members. *Id.* at *8 ("the claims of each putative class member, however, are based on what disclosures were or were not made and to what terms and conditions the customer actually agreed at the point of sale."). As noted in Class Plaintiffs' Reply Brief (at 56-57), in such cases, in contrast to antitrust cases like this one, differences in state laws relating to reliance and scienter are important. Indeed, *Tyler* relies principally on *In re Prempro Prod. Liab. Litig.*, 230 F.R.D. 555, 559 (E.D. Ark. 2005), a case from the same district already distinguished by Class Plaintiffs on these grounds. Reply Brief at 56-57.

Second, unlike this case, *Tyler* was not an MDL proceeding involving cases filed around the country. Rather, it duplicated – at least as to the claim of the named plaintiff – a more advanced case brought in Arkansas state court. *Tyler*, 2010 WL 670119 at *3. In addition, the plaintiff sought exclusively to certify a single 25 state class under Arkansas law. *Id.* at *4. Indeed, while conceding the existence of outcome determinative differences among the state

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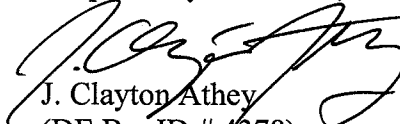
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laws at issue, she apparently failed to address the possibility that the court might conclude that the laws of the individual states should apply.

Third, although not an explicit ground for the court's ruling in *Tyler*, it would appear that the plaintiff's motion for class certification was sorely lacking in many other respects. Thus, for example, despite the importance to her case of the defendant's representations regarding the prepayment penalties, and her understanding of them, the plaintiff testified in deposition and at the class certification hearing that she could remember *virtually nothing* about the details of her own transaction. *Id.* at *2.

Finally, *Tyler* is not pertinent to the choice of law issues in this case. *Tyler*'s analysis 1) turns almost entirely on the contractual nature of the dispute and the existence of a choice of law provision (*id.* at *6-7); and 2) applies Arkansas's unique choice of law jurisprudence which is not applicable in this case. *Id.* at *8 (Arkansas tort choice of law analysis a combination of *lex loci delicti* and "Professor Robert A. Leflar's five-factor approach").

Respectfully submitted,



J. Clayton Athey
(DE Bar ID # 4378)

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